

Nebraska Taxation of Native American Reservation Indians

Revised June, 1996



The purpose of this information guide is to inform Nebraska taxpayers of the tax status of native American Indians residing in Nebraska on an Indian Reservation regarding taxes administered by the Nebraska Department of Revenue. For the purpose of this guide, the term "Indian" will be used when making reference to Native American Indians. This guide does not affect any fees, taxes, or other departments or commissions including but not limited to Health, Agriculture, Liquor, Labor, Insurance, Motor Vehicles, and Secretary of State.

Who is exempt from Nebraska tax?

Generally, no Nebraska tax will be imposed on an Indian residing in Nebraska on an Indian Reservation. An Indian is an enrolled member of a recognized American Indian tribe or a person of one-fourth or more Indian blood. A reservation Indian is an Indian who resides in Nebraska on an Indian reservation.

Indian reservations within Nebraska are the total land area provided for the Santee Sioux, Omaha, Winnebago, Iowa, and Sac and Fox Indian tribes under original allotment acts establishing the reservations. This area includes all of Thurston County, portions of Knox, Cuming, Burt, Dixon, and Richardson Counties; and the cities, towns, or villages of Santee, Lindy, Walthill, Macy, Rosalie, Pender, Thurston, Winnebago, and Preston. The city of Emerson, South of First Street, is located on the Winnebago Indian Reservation.

Joint ownership of property. Where there is joint ownership of property, the exemption applies only in proportion to the interest of the reservation Indian or Indians. The portion owned by a person who is not an Indian is subject to taxation.

Identification card. A Nebraska State Tax Exemption Identification Card and number will be issued by the Nebraska Department of Revenue, upon request, to any reservation Indian. A Nebraska Application for State Tax Exemption Identification, Form 25, must be completed to obtain an exemption. This identification card and number will assist retailers and employers in identifying those reservation Indians who qualify for the exemption from state taxation as discussed below. An exempt card is **not** required in order to qualify for the exemption.

What is exempt from sales and use tax?

Any sale, lease, or rental of tangible personal property, utilities, admissions, warranty, maintenance agreements, computer software, lodging, or other service subject to sales tax, to a reservation Indian where title and possession are taken within the boundaries of an Indian reservation in Nebraska, is exempt from Nebraska sales and use tax.

Any purchase by a reservation Indian of tangible personal property, warranties, maintenance agreement, or computer software where transfer of title and possession takes place outside the boundaries of an Indian reservation in Nebraska is taxable.

Retailer's responsibility. Retailers located on an Indian reservation in Nebraska are required to be licensed with the Nebraska Department of Revenue for collection of sales and use tax.

When making sales of tangible personal property where transfer of title and possession occur within the boundaries of an Indian reservation in Nebraska, retailers will be required to indicate on their sales invoices or sales slips the name and address of the reservation Indian, the Nebraska State Tax Exemption number, if available, the sale price of the item and a description of the item sold.

If a Nebraska State Tax Exemption Card and number have not been assigned or are unavailable, the retailer must obtain from the purchaser a Nebraska Exemption Certificate for Native American Reservation Indians, Form 26, and retain it with the business records. A Form 26 should contain the following information:

- Retailer's name and mailing address;
- Nature of the exempt transaction;
- Date of the transaction;
- Statement by the reservation Indian that he or she resides within the boundaries of the Indian reservation in Nebraska where they are taking delivery of the tangible personal property; and
- Signature of the reservation Indian.

This information is necessary to support deductions from gross receipts claimed by the retailer on the Nebraska and City Sales and Use Tax Return, Form 10.

The Form 26 is not necessary where there is a sale of tangible personal property or taxable service for less than \$50.00. The retailer will be required only to distinguish on their business records the exempt reservation Indian transactions from the nonexempt transactions.

Retailers located off the Nebraska Indian reservation must obtain a Form 26 for all transactions with reservation Indians where title and possession to the property sold are taken within the boundaries of an Indian reservation in Nebraska.

A retailer who makes recurring sales of tangible personal property or taxable services which are delivered to a reservation Indian within the boundaries of an Indian reservation in Nebraska does not need to accept a separate Form 26 for each sale. The retailer may accept a Form 26 designated as a blanket certificate to cover all future sales made to the reservation Indian at the location shown on the blanket certificate.

Which income is exempt from income tax?

Income earned by a reservation Indian is subject to the Nebraska income tax unless derived from sources within the boundaries of an Indian reservation in Nebraska.

A corporation's income is subject to tax, even though one or more shareholders is a reservation Indian.

Computation of individual income tax for reservation Indians. A reservation Indian is subject to tax on all income except that income derived from sources within the boundaries of an Indian reservation in Nebraska. Rules used to determine the source of income are contained in Reg-22-003 of the Nebraska Individual Income Tax Regulations. In applying this regulation, Indian reservations in Nebraska will be treated as though they are another state, and the reservation Indian will be treated in the same manner as a nonresident.

A return is not required if a reservation Indian's income is earned entirely within the boundaries of an Indian reservation in Nebraska. If income is earned from sources on and off the reservation, a return is required. The income derived from sources within the boundaries of an Indian reservation in Nebraska will be a Nebraska adjustment decreasing federal taxable income and must be reported on Schedule I of the Nebraska Individual Income Tax Return, Form 1040N.

When are you not subject to Nebraska income tax withholding?

The wages payable to a reservation Indian are not subject to Nebraska income tax withholding if the following two criteria are met:

- The individual must be a reservation Indian, and
- The wages must be earned for services performed within the boundaries of an Indian reservation in Nebraska.

If both of these requirements are not met, the wages will be subject to Nebraska income tax withholding. If a reservation Indian employee derives wages from services performed both within and outside the boundaries of an Indian reservation in Nebraska, the percentage withholding method set forth in Reg-21-006 of the Nebraska Individual Income Tax Regulations must be used.

Record-keeping requirements of the employer.

Employers must obtain from reservation Indian employees a Nebraska Exemption Certificate for Reservation Indians, Form 26, for wages earned within the boundaries of an Indian reservation in Nebraska. The reservation Indian employee must state on the Form 26 that he or she resides on an Indian reservation in Nebraska and earns wages from services performed within the boundaries of an Indian reservation in Nebraska.

When are you exempt from motor vehicle tax?

A reservation Indian registering a motor vehicle at a location within the boundaries of an Indian reservation in Nebraska is exempt from the motor vehicle tax, but is not exempt from license and registration fees.

A motor vehicle **leased or rented** to a reservation Indian is not exempt from the motor vehicle tax.

When are you exempt from sales tax on a motor vehicle?

The sale of a motor vehicle to a reservation Indian registered at a location within the boundaries of an Indian reservation in Nebraska is exempt from the Nebraska sales and use tax. The Nebraska Sales and Use Tax Statement for Motor Vehicles and Trailer Sales, Form 6, must be completed by the reservation Indian claiming exemption and furnished to the county treasurer.

Lease or rental of a motor vehicle to a reservation Indian is exempt from the Nebraska sales and use tax if the lease term is for less than one year and delivery of the vehicle is taken within the boundaries of an Indian reservation in Nebraska. If the lease is for a term of one year or more, sales tax does not apply if the vehicle is properly registered at an address within the boundaries of an Indian reservation in Nebraska.

When are you exempt from personal property tax?

Tangible personal property is not subject to the property tax if the following two criteria are met:

- The property must be owned by a reservation Indian; and
- The tangible personal property must have a tax situs within the boundaries of an Indian reservation in Nebraska.

This includes all tangible personal property which otherwise would be reported for purposes of taxation.

Are you subject to real property tax?

Real property held in fee by a reservation Indian is subject to real property taxation even if the property is located on an Indian reservation.

Are motor vehicle fuels, diesel fuel, and compressed fuels taxable?

Motor vehicle fuels, diesel fuel, and compressed fuels are exempt from Nebraska fuel tax when purchased by a reservation Indian on an Indian reservation in Nebraska.

Exempt sales must be substantiated with the following information:

- Name and address of the purchaser;
- Evidence that the purchaser is a reservation Indian. Evidence may include but is not limited to:

1. A Nebraska Department of Revenue exemption card; or
2. Car registration indicating the individual is exempt from tax as an Indian.

- Type of fuel sold;
- Total gallons sold;
- Total sales price; and
- Signature of the purchaser.

Sales of tax-paid fuel by retailers

Retailers who are not licensed suppliers, distributors, wholesalers, or importers and make exempt sales of tax-paid motor vehicle fuels (gasoline or gasohol) to a reservation Indian must complete a Nebraska Motor Fuels Tax Refund Claim, Form 84, to obtain a refund from the Nebraska Department of Revenue.

Retailers who are not licensed suppliers, distributors, wholesalers, or importers and make exempt sales of tax-paid undyed diesel fuel to a reservation Indian must complete a Nebraska Diesel Fuel Retailer's Exemption Report, Form TC91R, to receive a credit or reimbursement from their supplier.

Licensed suppliers, distributors, wholesalers, or importers of motor vehicle fuels or diesel fuel who make exempt sales of tax-paid motor vehicle fuels or diesel fuel to a reservation Indian may take a deduction on their Nebraska Motor Vehicle Fuels Tax Return, Form 81, or Nebraska Diesel Fuel Tax Return, Form 91.

Licensed Nebraska compressed fuel retailers who make exempt sales of compressed fuels to a reservation Indian for use in a licensed motor vehicle must indicate the gallons on lines 2 and 4 of the Nebraska Compressed Fuel Retailer Return, Form 86.

Purchases of tax-paid fuel

Reservation Indians who purchase tax-paid fuel on an Indian reservation in Nebraska may request a refund of the tax paid by filing Form 84 with the Motor Fuels Division, Nebraska Department of Revenue. Refund claims must be filed within three years from the date of purchase.

When are you exempt from taxation on bingo, pickle cards, and other forms of gaming?

The gross receipts from bingo games conducted by an Indian tribe on an Indian reservation in Nebraska are not subject to the bingo tax, pursuant to 25 U.S.C. Section 2701, et al. The conduct of bingo as well as pickle cards sold at the same location by an Indian tribe are not subject to state regulation or taxation. Generally, all other forms of gaming (other than Class I) conducted by an Indian tribe on an Indian reservation, including keno, are prohibited unless conducted in conformance with a Tribal-State compact. Questions relating to taxation of lawful forms of gaming conducted by persons other than an Indian tribe on Indian land should be referred to the Department's Charitable Gaming Division.

When are you exempt from cigarette tax?

Sales of cigarettes to a reservation Indian where title and possession are taken within the boundaries of an Indian reservation in Nebraska are exempt from the Nebraska cigarette tax.

Retailer's responsibility. Cigarette retailers making exempt sales to reservation Indians must purchase their cigarettes with tax included, but may claim a credit for the cigarette tax paid to the licensed wholesaler for those exempt sales. This claim of credit must be made to the licensed wholesaler on the Nebraska Credit Computation for Cigarette and Tobacco Products Sold to Native American Reservation Indians, Form 68. The first two copies of the four-part form are to be given to the wholesaler when credit is allowed. The third copy is to be retained by the retailer with its records, and the fourth copy is to be mailed monthly by the retailer to the Nebraska Department of Revenue.

Record-keeping requirements. The cigarette retailer is required to distinguish on its records the exempt cigarette sales from the nonexempt cigarette sales to support any claims for credit.

Wholesaler's responsibility. The wholesaler is to allow credit to the retailer for cigarette tax claimed on the Form 68. The designated copy of the completed Form 68 must be submitted with the Nebraska Cigarette Purchase Order for Stamps and Impressions in order to receive credit for the credits allowed to the retailers. The wholesaler is to retain a copy of Form 68 with its records.

How do you file for a refund of Nebraska taxes paid?

An Indian who has made an overpayment of Nebraska taxes may file for a refund. The statute of limitations for filing a refund claim is:

- Three years for sales, use, individual income, and motor fuels taxes. The claim must be submitted to the Nebraska Department of Revenue; and
- 30 days after payment for motor vehicle and personal property taxes. The claim must be submitted to the county treasurer.

To obtain a refund of income tax withheld during the current taxable year, file a current year Nebraska Individual Income Tax Return, Form 1040N.

Each claim for refund of Nebraska taxes paid must be supported by proof of claimant's reservation Indian status. The claimant may prove his or her status as an Indian by submitting his or her identification card number or a copy of his or her certificate of blood quantum or a census certificate, the last two of which are issued by the United States Bureau of Indian Affairs. Where there is joint ownership of property for which exemption is claimed, each of the joint owners must establish his or her status as a reservation Indian.

FOR NEBRASKA TAX ASSISTANCE

For All Tax Programs Except Motor Fuels

Contact your regional office or call toll free *1-800-742-7474
(Lincoln residents call 471-5729).

SCOTTSBLUFF

Panhandle State Office Complex
4500 Avenue I, Box 1500
Scottsbluff, Nebraska 69363-1500
Telephone (308) 632-1200

GRAND ISLAND

First Federal Building, Suite 460
1811 West Second Street
Grand Island, Nebraska 68803-5465
Telephone (308) 385-6067

NORTH PLATTE

Craft State Office Building
200 South Silber Street
North Platte, Nebraska 69101-4219
Telephone (308) 535-8250

NORFOLK

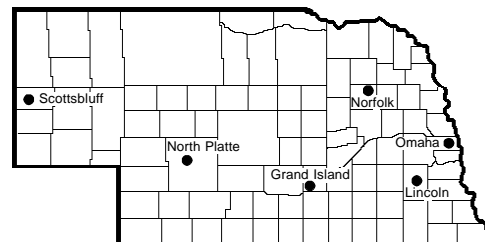
304 North 5th Street, Suite "D"
Norfolk, Nebraska 68701-4093
Telephone (402) 370-3333

OMAHA

Nebraska State Office Building
1313 Farnam-on-the-Mall
Omaha, Nebraska 68102-1871
Telephone (402) 595-2065

LINCOLN

Nebraska State Office Building
301 Centennial Mall South
Lincoln, Nebraska 68509-4818
Telephone (402) 471-5729



For TT (Text Telephone) dial 1-800-382-9309. TDD (Telecommunication Device for the Deaf) is designated by the use of "TT," which is consistent with the Americans with Disabilities Act.

For Motor Fuels tax programs only call toll free 1-800-554-3835 (Lincoln residents call 471-5730).

* Toll free from within the continental United States.